

Remarks:

In the December 23, 2003, Office Action, Claims 1, 2, 6-9, 14, 21, 23, 41, 42, 46-49, 54, 61, and 100 were rejected under 35 U.S.C. Section 102(b) as being anticipated by Branson. Claims 1, 2, 6-9, 14, 18, 19, and 100 were rejected under 35 U.S.C. Section 102(b) as being anticipated by Boeckmann et al. Claims 21, 23, 41, 42, 46-49, 54, 61, 100-102, and 104 were rejected under 35 U.S.C. Section 102(e) as being anticipated by Thieman et al. Claims 75-77, 79, 82-86, and 100 were rejected under 35 U.S.C. Section 102(b) as being anticipated by May. Claims 75-77, 79, 82-86, and 100 were rejected under 35 U.S.C. Section 102(b) as being anticipated by Dobreski.

Claim 16 was rejected under 35 U.S.C. Section 103 as being unpatentable over Boeckmann et al. in view of Hayashi et al. Claim 56 was rejected under 35 U.S.C. Section 103 as being unpatentable over Thieman et al. in view of Hayashi et al. Claims 58 and 59 were rejected under 35 U.S.C. Section 103 as being unpatentable over Thieman et al. in view of May. Claim 93 was rejected under 35 U.S.C. Section 103 as being unpatentable over May in view of Hayashi et al.

Fig. 3 is being amended to eliminate the use of the reference numeral "19" to refer to a component. Both a marked-up copy of the amended figure and a replacement drawing sheet are being submitted. In the specification, a paragraph is also being amended to make the corresponding changes in the specification. This change is being made due to a related application which includes the same figures plus a number of

additional figures using the reference numeral "19" in two figures, the second of which is not included in the present application.

Claims 76, 77, and 100-102 have been cancelled without prejudice. Claims 1, 2, 6-9, 14, 16, 18, 19, 21, 23, 41, 42, 46-49, 54, 56, 58, 59, 61, 75, 79, 82-86, 93, and 104 have been amended to more particularly claim the present invention. New Claims 107-147 have been added in this Amendment E. No new matter has been added.

Applicants regard as their invention a reclosable bag formed of web material having a fold therein which forms the top of the bag. Two areas of structural weakness are located on opposite sides of the fold. A reclosable fastener has a skirt structure including a distal portion which is coupled to the web material, and at least part of the reclosable fastener extends past the two areas of structural weakness and into the fold. The portion of the web material forming the fold and between the two areas of structural weakness create a portion which may be removed, with the part of the reclosable fastener which extends beyond the areas of the structural weakness being exposed and not covered by or located between portions of the web material, thereby making the fastener easy to access manually to obtain access to the contents of the bag and to reseal the bag. This invention is not taught or suggested in any of the references provided by the Examiner in the December 23, 2003, Office Action, or, indeed, by any other reference of which Applicants are aware.

Prior to discussing the claims as amended herein, it is useful to examine the references cited by the Examiner in the December 23, 2003, Office Action in order to

ascertain what they teach. Beginning with the Branson reference (U.S. Patent No. 4,927,271, which is the principal reference relied upon by the Examiner, the December 23, 2003, the perforations 38 and 40 are referenced together with the fastener (34 and 36) and the "hood material," which is vague but understood to refer to the hooded enclosure 14. What is immediately striking about the Branson reference is the poor quality of its drawings, which in the most important view of Fig. 1 show the bag material as lines without thickness. There is a strict requirement that "the prior art reference must be enabling, thus placing the allegedly disclosed matter in the possession of the public." Akzo N.V. v. U.S. Int'l Trade Comm'n, 808 F.2d 1471, 1479, 1 USPQ2d 1241, 1245 (Fed. Cir. 1986), *cert. denied*, 482 U.S. 909 (1987).

By closely examining the Branson reference, it is immediately apparent to one skilled in the art that it is inoperative in that the perforations 38 and 40 are located squarely between the heat sealing mechanisms 58 and 60, making it readily apparent that the portions of the hooded enclosure 14 on both sides of the perforations 38 and 40 will be sealed to the wall panels 16 and 18. Accordingly, the perforations 38 and 40 will be inoperative since both the material of the hooded enclosure on both sides of the perforations 38 and 40 will be sealed to the wall panels 16 and 18. Accordingly, Applicants submit that the Branson reference is not enabling and thus is improper as a reference to teach what the Examiner asserts that Branson teaches.

Even if Branson was not inoperative, the bag taught by Branson is constructed in an entirely different manner than the resealable bag as presently claimed by Applicants.

The Branson bag has a separate hooded enclosure 14, which is mounted on the bag 10. The fastener profile elements 34 and 36 are also attached directly to the wall panels 16 and 18, respectively, and have no portion whatsoever which could be characterized as a distal portion. Instead, the fastener profile elements 34 and 36 both have flat back sides which are connected to the wall panels 16 and 18, respectively, in their entirety. The wall panels 16 and 18 also extend well beyond the fastener profile elements 34 and 36, which are not readily accessible after a portion of the hooded enclosure 14 is removed (which removal is believed to be impossible due to the inoperative construction of the bag shown in the Branson reference).

The Boeckmann et al. reference (U.S. Patent No. 4,846,565) is even more unlike the reclosable bag of the present invention as claimed herein, and is characteristic of the prior art over which the present invention represents a substantial improvement. The rib 16 and groove 17 of Boeckmann et al. are simply attached directly to the front wall 12 and the rear wall 11, respectively, and have no portion whatsoever which could be characterized as a distal portion. Instead, the rib 16 and groove 17 both have a flat back side which is connected to the front wall 12 and the rear wall 11 in their entirety.

In addition, the front wall 12 and the rear wall 11 of Boeckmann et al. quite clearly extend well beyond the rib 16 and groove 17 after the upper distal edge 20 is removed by tearing the perforated lines 21 and 22. While the Examiner attempts to characterize the bottom seal or fold 14 as a fold, it is clear that the bottom seal 14 does not teach the fold element of the claims of the present invention. Indeed, the Examiner himself notes a

major point of distinction between the Boeckmann et al. reference and Applicants' invention in noting, with regard to Boeckmann et al., that "the skirt for the fastener (i.e. the portion that supports items 16 and 17 and attaches them to the bag) extends above and below the fastener..."

The Thieman et al. reference (PCT Publication No. WO 98/45180) is also unlike the reclosable bag of the present invention as claimed herein, and is also viewed as having significant enablement issues due to its brevity and the poor quality of its disclosure. Figs. 7 and 7A of Thieman et al. apparently show a bag having a reclosable closure made in unitary fashion. A sheet 60 forms a hood that covers and surrounds the reclosable closure and may be provided with perforations 72. The sheet 60 is shown as closely surrounding the reclosable closure. The construction of Thieman et al. is unlike that of the present invention as now claimed in independent Claims 21, 41, 61, and 104, with regard to which claims Thieman et al. was cited.

The May reference (U.S. Patent No. 5,725,312) is even more unlike the reclosable bag of the present invention as claimed herein. May is apparently cited for Fig. 26, which discloses perforation strips 418 (not shown in Fig. 26) and 220. While May states that the implementation of Fig. 26 may be used with other embodiments, the location of the perforation strips on these figures is not shown. The only logical assumption is that they are at or close adjacent to the top of the bags. May certainly does not teach or suggest anything to the contrary.

The Dobreski reference (U.S. Patent No. 5,682,730) is so completely unlike the present invention that its citation is remarkable. Dobreski is a reclosable bag which has a tear-away bottom to facilitate the bags being mounted on a dispensing apparatus. Dobreski does not teach or suggest a construction even remotely like that of the present invention as claimed.

Finally, the Hayashi et al. reference (U.S. Patent No. 6,074,097) is cited as a secondary reference to teach areas of weakness of different types.

Applicants have cancelled independent Claims 76, 77, 100, 101, and 102 without prejudice to focus on other claims which more sharply define Applicants' invention. While Applicants do not concur with the rejections, they have also extensively amended independent Claims 1, 21, 41, 61, 75, and 104 to more precisely claim their invention in a manner which more clearly distinguishes the claims from the prior art, including the references cited by the Examiner. Applicants have also added new independent Claims 125 and 144, as well as new dependent Claims 107-124, 126-143, and 145-147. New dependent Claims 107-124, 126-128, and 145-147 in particular are directed to aspects of the present invention which were not previously claimed.

Referring first to independent Claim 1, which was rejected as being anticipated by either Branson or Boeckmann et al., Applicants maintain that neither of these references teaches, or suggests, Applicants' invention as claimed therein. Amended independent Claim 1 includes limitations which are not taught by the prior art, either the art cited by the Examiner in the December 23, 2003, Office Action or any other prior art of which

Applicants are aware. Claim 1 has a sheet of web material which defines the fold, the areas of weakness, and the opening. The Branson reference has a hooded enclosure with perforations, but the hooded enclosure does not define an opening to allow the bag to be filled. On the contrary, Branson has two wall panels which are not part of the hooded enclosure, but rather separate web segments which define an opening therebetween at the bottom thereof (column 4, lines 5-68).

Branson does not have either skirt structures or a distal margin on its fastener; rather, it has a fastener having backs which are attached to the wall panels. Claim 1 specifically requires that the distal margins of the skirt structures are coupled to the web material. Even if the Examiner was correct in finding only a part of the backs of the Branson fastener halves to be a distal portion (which is contrary to what Branson clearly teaches), the Branson fastener halves are attached to the wall panels not at such a portion but rather on the entire bottom halves of the fastener backs. Also, Branson clearly shows the fastener located well within the distal portions of the wall panels.

Boeckmann et al. does not have either skirt structures or a distal margin on its fastener; rather, it has a fastener having backs which are attached to the wall panels. Claim 1 specifically states that the distal margins of the skirt structures are attached to the web material. Most significantly, Boeckmann et al. clearly does not have any part of its fastener (the rib and groove) which extends beyond the areas of structural weakness (the perforated lines) and into the fold structure (the portion adjacent the upper distal edge 20). The Examiner's statement that the bottom seam or fold 14 of Boeckmann et al. is the

fold of Claim 1 is disingenuous at best, and flat out wrong in that if it is a fold, an opening for filling the bag is required to be opposite. Reference numeral 14 in Boeckmann et al. clearly refers to an opening through which the bag is filled, as those skilled in the art will clearly understand. Thus, Boeckmann et al. simply does not teach or suggest the limitations of Claim 1.

Since the limitations of Claim 1 are not taught in the cited prior art, they are believed to patentably distinguish Claim 1. Thus, Applicants believe that Claim 1 is allowable, and respectfully requests its allowance by the Examiner.

Dependent Claims 2, 6-9, 14, 16, 18, and 19 depend upon independent Claim 1, which as stated above is believed to be allowable, and thus these dependent claims are also believed to be allowable; the allowance of these claims by the Examiner is also respectfully requested. Accordingly, there is believed to be no need to comment on the rejection of Claim 16 upon Boeckmann et al. in view of Hayashi et al. (U.S. Patent No. 6,074,097), since Claim 16 is believed to be allowable by virtue of its dependency upon Claim 1, which is believed to be allowable for the reasons stated above.

Referring next to independent Claim 21, which was rejected as being anticipated by either Branson or Thieman et al., Applicants maintain that neither of these references teaches, or suggests, Applicants' invention as claimed therein. Amended independent Claim 21 includes limitations which are not taught by the prior art, either the art cited by the Examiner in the December 23, 2003, Office Action or any other prior art of which Applicants are aware. Claim 21 has a sheet of web material which defines the fold, the

areas of structural weakness, and the opening. The Branson reference has a hooded enclosure with perforations, but the hooded enclosure does not define an opening to allow the bag to be filled. On the contrary, Branson has two wall panels which are not part of the hooded enclosure, but rather are separate web segments which define an opening therebetween at the bottom thereof (column 4, lines 5-68). Thieman et al. also does not meet the same claim limitations, since it has a tamper evident sheet with perforations, but the tamper evident sheet does not define an opening to allow the bag to be filled. Instead, Thieman et al. instead would either fill the bag at the bottom or through the opening to the bag before attaching the tamper evident sheet, which is entirely different from the claimed limitations.

Branson does not have either fin structures or a coupling portion on such a fin structure; rather, it has a fastener having backs which are attached to the wall panels. Claim 21 specifically states that the coupling portions of the fin structures are coupled to the web material. Even if the Examiner was correct in finding only a part of the back of the Branson fastener halves to be a fin portion (which is contrary to what Branson clearly teaches), the Branson fastener halves are attached to the wall panels not at such a portion but rather at the entire bottom halves of the fastener backs. Also, Branson clearly shows the fastener located well within the distal portions of the wall panels.

Thieman et al. is not enabling to determine how the fastener is attached to the bag. As such, Thieman et al. is not believed to teach the fin structures or coupling portions required by Claim 21, or, indeed, any of the structure of the fastener taught by Claim 21.

Since the limitations of Claim 21 are not taught in the cited prior art, they are believed to patentably distinguish Claim 21. Thus, Applicants believe that Claim 21 is allowable, and respectfully requests its allowance by the Examiner.

Dependent Claim 23 depends upon independent Claim 21, which as stated above is believed to be allowable, and thus Claim 23 is also believed to be allowable; the allowance of Claim 23 by the Examiner is also respectfully requested.

Referring now to independent Claim 41, which was rejected as being anticipated by either Branson or Thieman et al., Applicants maintain that neither of these references teaches, or suggests, Applicants' invention as claimed therein. Amended independent Claim 41 includes limitations which are not taught by the prior art, either the art cited by the Examiner in the December 23, 2003, Office Action or any other prior art of which Applicants are aware. Claim 41 has a sheet of web material which defines the fold, the areas having a propensity to tear, and the opening. The Branson reference has a hooded enclosure with perforations, but the hooded enclosure does not define an opening to allow the bag to be filled. On the contrary, Branson has two wall panels which are not part of the hooded enclosure, but rather are separate web segments which define an opening therebetween at the bottom thereof (column 4, lines 5-68). Thieman et al. also does not meet these claim limitations, since it has a tamper evident sheet with perforations, but the tamper evident sheet does not define an opening to allow the bag to be filled. Instead, Thieman et al. instead would either fill the bag at the bottom or through the opening to

the bag before attaching the tamper evident sheet, which is entirely different from the claimed limitations.

Branson does not have either skirt structures or a distal margin on its fastener; rather, it has a fastener having backs which are attached to the wall panels. Claim 41 specifically states that the distal margins of the skirt structures are coupled to the web material. Even if the Examiner was correct in finding only a part of the back of the Branson fastener halves to be a distal portion (which is contrary to what Branson clearly teaches), the Branson fastener halves are attached to the wall panels not at such a portion but rather at the entire bottom halves of the fastener backs. Also, Branson clearly shows the fastener located well within the distal portions of the wall panels.

Thieman et al. is not enabling to determine how the fastener is attached to the bag. As such, Thieman et al. is not believed to teach the skirt structures or distal margins required by Claim 41. Since the limitations of Claim 41 are not taught in the cited prior art, they are believed to patentably distinguish Claim 41. Thus, Applicants believe that Claim 41 is allowable, and respectfully requests its allowance by the Examiner.

Dependent Claims 42, 46-49, 54, 56, 58, and 59 depend upon independent Claim 41, which as stated above is believed to be allowable, and thus these dependent claims are also believed to be allowable; the allowance of these claims by the Examiner is also respectfully requested. Accordingly, there is believed to be no need to comment on the rejection of Claims 56, upon Thieman et al. in view of Hayashi et al., or of Claims 58 and 59, upon Thieman et al. in view of May, since these claims are believed to be allowable

by virtue of their dependency upon Claim 41, which is believed to be allowable for the reasons stated above.

Referring next to independent Claim 61, which was also rejected as being anticipated by either Branson or Thieman et al., Applicants maintain that neither of these references teaches, or suggests, Applicants' invention as claimed therein. Amended independent Claim 61 includes limitations which are not taught by the prior art, either the art cited by the Examiner in the December 23, 2003, Office Action or any other prior art of which Applicants are aware. Claim 61 has a sheet of web material which defines the fold, the areas having a propensity to tear, and the opening. The Branson reference has a hooded enclosure with perforations, but the hooded enclosure does not define an opening to allow the bag to be filled. On the contrary, Branson has two wall panels which are not part of the hooded enclosure, but rather are separate web segments which define an opening therebetween at the bottom thereof (column 4, lines 5-68). Thieman et al. also does not meet the same claim limitations, since it has a tamper evident sheet with perforations, but the tamper evident sheet does not define an opening to allow the bag to be filled. Instead, Thieman et al. instead would either fill the bag at the bottom or through the opening to the bag before attaching the tamper evident sheet, which is entirely different from the claimed limitations.

Branson does not have either skirt structures or a distal margin on its fastener; rather, it has a fastener having backs which are attached to the wall panels. Claim 61 specifically states that the distal margins of the skirt structures are coupled to the web

material. Even if the Examiner was correct in finding only a part of the back of the Branson fastener halves to be a distal portion (which is contrary to what Branson clearly teaches), the Branson fastener halves are attached to the wall panels not at such a portion but rather at the entire bottom halves of the fastener backs. Also, Branson clearly shows the fastener located well within the distal portions of the wall panels.

Thieman et al. is not enabling to determine how the fastener is attached to the bag. As such, Thieman et al. is not believed to teach the skirt structures or distal margins required by Claim 61. Since the limitations of Claim 61 are not taught in the cited prior art, they are believed to patentably distinguish Claim 61. Thus, Applicants believe that Claim 61 is allowable, and respectfully requests its allowance by the Examiner.

Referring now to independent Claim 75, which was rejected as being anticipated by either May or Dobreski, Applicants maintain that neither of these references teaches, or suggests, Applicants' invention as claimed therein. Amended independent Claim 75 includes limitations which are not taught by the prior art, either the art cited by the Examiner in the December 23, 2003, Office Action or any other prior art of which Applicants are aware. Claim 75 requires the two tear areas to be on opposite sides of the fold structure, but May apparently has the perforation strips located "at fold line 717..." (column 27, line 52-53). Referring to the other figures in May, it will be seen that the top of the bag has width, and from Fig. 26 it is apparent that the "fold line 417" is a region rather than a true line. This is further reinforced by the indication that the holding region

422 is pinched in order to grip it. Accordingly, the perforation strips are not truly located on opposite sides of a fold structure.

May does not have either skirt structures or a distal margin on its fastener; rather, it has a fastener having backs which are attached to the wall panels. Claim 75 specifically states that the distal margins of the skirt structures are coupled to the web material. The May fastener halves are attached to the wall panels not at such a portion but rather at the midpoints of the fastener backs. Also, Claim 75 clearly requires the fastener tracks to extend beyond the tear areas, and in May the top and bottom films will clearly extend beyond the fastener since the perforation strips are located at the fold line between the top and bottom films (column 27, lines 52-53).

Dobreski clearly does not have fastener tracks which extend above the fold areas into the fold structure. The entire construction of Dobreski is so markedly different from the present invention that it is remarkable, with the Dobreski bag having no tamper evident mechanism whatsoever. This is probably so because Dobreski has a completely and totally different purpose from that of the present invention -- Dobreski is not intended to package product, but rather to serve as a storage bag for bulk merchandise such as produce purchased by a consumer at a grocery store. Since the limitations of Claim 75 are not taught in the cited prior art, they are believed to patentably distinguish Claim 75. Thus, Applicants believe that Claim 75 is allowable, and respectfully requests its allowance by the Examiner.

Dependent Claims 79, 82-86, and 93 depend upon independent Claim 75, which as stated above is believed to be allowable, and thus these dependent claims are also believed to be allowable; the allowance of these claims by the Examiner is also respectfully requested. Accordingly, there is believed to be no need to comment on the rejection of Claim 93 upon May in view of Hayashi et al. (U.S. Patent No. 6,074,097), since Claim 16 is believed to be allowable by virtue of its dependency upon Claim 1, which is believed to be allowable for the reasons stated above.

Referring next to independent Claim 104, which was rejected as being anticipated by Thieman et al., Applicants maintain that this reference does not teach, or suggest, Applicants' invention as claimed therein. Amended independent Claim 104 includes limitations which are not taught by the prior art, either the art cited by the Examiner in the December 23, 2003, Office Action or any other prior art of which Applicants are aware. Claim 104 has a sheet of web material which defines the fold, the areas of structural weakness, and the opening. Thieman et al. has a tamper evident sheet with perforations, but the tamper evident sheet does not define an opening to allow the bag to be filled. Instead, Thieman et al. instead would either fill the bag at the bottom or through the opening to the bag before attaching the tamper evident sheet, which is entirely different from the claimed limitations.

Thieman et al. is not enabling to determine how the fastener is attached to the bag. As such, Thieman et al. is not believed to teach the fin structures or coupling portions required by Claim 104, or, indeed, any of the structure of the fastener taught by Claim

104. Since the limitations of Claim 104 are not taught in the cited prior art, they are believed to patentably distinguish Claim 104. Thus, Applicants believe that Claim 104 is allowable, and respectfully requests its allowance by the Examiner.

Newly added dependant Claims 107-124 all contain additional limitations not taught or suggested in the art. These claims will not be discussed in detail at this time, since they all depend upon independent claims which are believed to be allowable for the reasons stated above; the allowance of these claims by the Examiner is also respectfully requested.

Newly added independent Claim 125 includes limitations which are not taught by the prior art, either the art cited by the Examiner in the December 23, 2003, Office Action or any other prior art of which Applicants are aware. Claim 125 has front and rear panels which both define the bag and include the areas of structural weakness therein, and are not taught or suggested by, and thereby patentably define over, Branson, Thieman et al., and Dobreski. The reclosable fastener and its fastener tracks with skirt structures and distal portions thereof are not taught or suggested by, and thereby patentably define over, Branson, Boeckmann et al., Thieman et al., May, and Dobreski. The location of the areas of structural weakness relative to the reclosable fastener and its fastener tracks are not taught or suggested by, and thereby patentably define over, Boeckmann et al., May, and Dobreski. Other patentable distinctions exist over individual prior art patents, but in view of the clear distinctiveness of Claim 125 over the prior art, further discussion is believed to be unnecessary.

Since the limitations of Claim 125 are not taught in the cited prior art, they are believed to patentably distinguish Claim 125. Thus, Applicants believe that Claim 125 is allowable, and respectfully requests its allowance by the Examiner.

Newly added dependent Claims 126-143 all contain additional limitations not taught or suggested in the art. These claims will not be discussed in detail at this time, since they all depend upon independent Claim 125 which is believed to be allowable for the reasons stated above; the allowance of these claims by the Examiner is also respectfully requested.

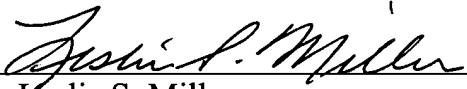
Newly added independent Claim 144 also includes limitations which are not taught by the prior art, either the art cited by the Examiner in the December 23, 2003, Office Action or any other prior art of which Applicants are aware. Claim 144 has a sheet of web material including a fold structure and both defines the bag and includes the tear areas therein, and is not taught or suggested by, and thereby patentably define over, Branson, Thieman et al., and Dobreski. The reclosable fastener and its fastener tracks with skirt structures and distal portions thereof are not taught or suggested by, and thereby patentably define over, Branson, Boeckmann et al., Thieman et al., May, and Dobreski. The location of the areas of structural weakness relative to the reclosable fastener and its fastener tracks are not taught or suggested by, and thereby patentably define over, Boeckmann et al., May, and Dobreski. Other patentable distinctions exist over individual prior art patents, but in view of the clear distinctiveness of Claim 125 over the prior art, further discussion is believed to be unnecessary.

Since the limitations of Claim 144 are not taught in the cited prior art, they are believed to patentably distinguish Claim 144. Thus, Applicants believe that Claim 144 is allowable, and respectfully requests its allowance by the Examiner.

Newly added dependent Claims 145-147 all contain additional limitations not taught or suggested in the art. These claims will not be discussed in detail at this time, since they all depend upon independent Claim 144 which is believed to be allowable for the reasons stated above; the allowance of these claims by the Examiner is also respectfully requested.

Accordingly, Applicants believe that Claims 1, 2, 6-9, 14, 16, 18, 19, 21, 23, 41, 42, 46-49, 54, 56, 58, 59, 61, 75, 79, 82-86, 93, 104, and 107-147 are patentable at this time. These claims remain pending following entry of this Amendment, and are in condition for allowance at this time. As such, Applicants respectfully request entry of the present Amendment and reconsideration of the application, with an early and favorable decision being solicited. Should the Examiner believe that the prosecution of the application could be expedited, the Examiner is requested to call Applicants' undersigned attorney at the number listed below.

Respectfully submitted:

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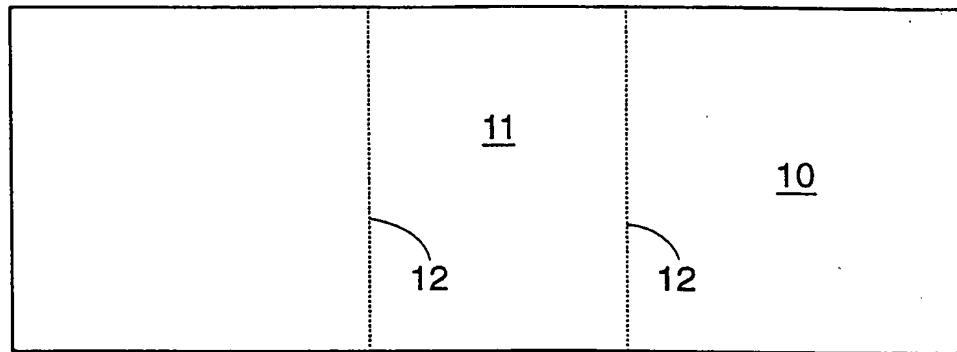


Fig. 1

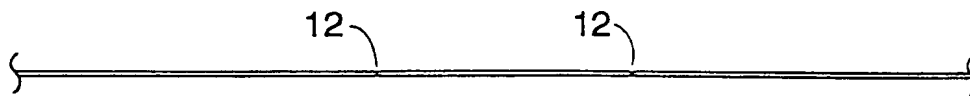


Fig. 2

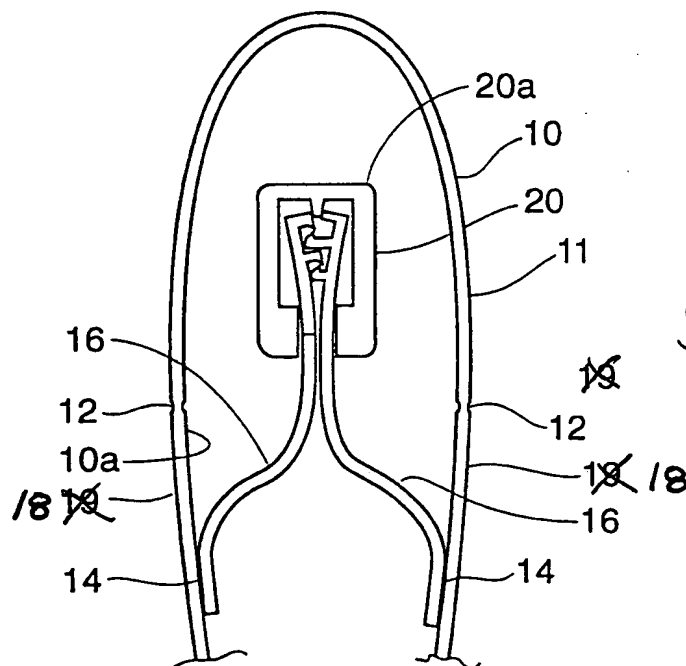


Fig. 3